IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/11/2003

CORAM

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.No.4370 OF 2000
AND
W.M.P.No.6719 OF 2000

1.T.Jeyasingh
2.A.Singarayan
3.P.Subbiah
4.N.Velmurugan
5.C.Sudalaimuthu
6.T.Natarajan
7.J.Pavul Sebastian
8.P.Sankaravelu
9.H.Raman
10.C.Sukumaran
11.V.Alagarsami
12.Y.Ebenezer
13.T.Ramachandran
14.S.Paraman
15.P.Balasubramanian
16.C.Unnikrishnan
17.C.Paramasivan
18.R.Govindarajan
19.M.Thandapani
20.T.Ramachandran
21.S.Mangaleswaran
22.R.Yagappan
23.S.Kalimuthu
24.M.Sethupandian
25.M.V.Subramanian
26.S.Pannerselvam
27.P.Ayyanar
28.L.Muthusamy
29.A.Sengodan
30.T.John Louis
31.J.George
32.A.Ramaraj
33.P.Gopikrishnan
34.K.Sengodan
35.P.Nagarajan
36.R.Ramasamy
37.A.Thangavelu
38.P.Natarajan

39.S.Sudhakaran
40.R.Rajamanickam
41.R.Rengasamy ... Petitioners

-Vs-

1.The Tamil Nadu Water Supply and
Drainage Board,
rep.by its Managing Director,
No.31, Kamarajar Salai,
Chepauk, Chennai-600 005.

2.The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Mechanical Division,
Madurai-625 002.

3.The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Mechanical Division,
Coimbatore-641 029.

4.The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Mechanical Division,
Trichy-620 001. ... Respondents

For petitioners : Mr.D.Hariparanthaman

For respondents : Mrs.Sudarshana Sundar

Petition under Article 226 of the Constitution of India,
praying for issuance of a writ of certiorarified mandamus, as stated therein.

:O R D E R
Petitioners seek to challenge the proceedings of the first respondent in B.P.Ms.No.97 dated 04.10.1999 and the consequential orders of the second, third and fourth respondents dated 30.11.1999, 20.10.1999 and 25.10.1999, and thereby reverting the petitioners from the redesignated post of Assistant Drillers to Helpers (Rig) and reducing their scale of pay with effect from 02.01.1998, apart from the order recovering the difference paid from 02.01.1998. The petitioners also seek for a consequential direction to the respondents to redesignate them as Assistant Drillers as from the date of such redesignation already made with consequential benefits, as was done in the case of other Helpers (Rig), who were holding ITI Certificate.
2. These 41 petitioners were all employed as Helpers (Rig) in

the first respondent Board. It is common ground that, in the year 1986, posts with the required qualifications came to be prescribed by virtue of G.O.Ms.No.136 MA & WS Department dated 28.01.1986. Thereafter, the first respondent issued B.P.Ms.No.113 dated 07.04.1987, by which exemption of the technical qualification and maximum age limit in respect of 78 Helpers, which included these 41 petitioners, came to be granted. It is not in dispute that there were also posts of Assistant Drillers and Drillers in the first respondent Board and that the qualification for the post of Assistant Driller was also possession of ITI, apart from VIII Standard. In such circumstances, when the improvement in the service conditions of various posts in the first respondent Board was contemplated, initially a One Man Committee, headed by a Deputy Secretary to the Government (Finance Department), was appointed and, subsequently, the same was entrusted to the Finance Director of the first respondent itself, to make an on the spot study and forward his report to the first respondent. He is stated to have submitted a report on 22.07.1997 and the same was placed before the first respondent Board for consideration of the improvement of service conditions of seven categories of employees, including that of Helpers and Rig Helpers. The Board is stated to have passed a resolution in No.6 .26 dated 10.11.1997, pursuant to which B.P.Ms.No.547 dated 04.12.199 7 came to be issued. Para 3 of the said B.P.is relevant for our purpose, which reads as under :

"3.Helpers/Rig Helpers : The Board hereby orders that the post of Rig Helper be redesignated as Assistant Driller with the scale of pay of Rs.950-1500 and the present incumbents holding the post of Rig Helpers with the I.T.I.qualification be accommodated in the redesignated post. For the Rig Helpers who do not possess I.T.I. qualifications, relevant regulations

prescribing the educational qualification may be relaxed in their favour and they may be accommodated in the redesignated post from the date of utilisation of the redesignated posts."

3. After the passing of the above said B.P.Ms.No.547 dated 04.12.19 97, it is stated that all the Rig Helpers were redesignated as Assistant Drillers in the scale of pay of Rs.950-1500. Thereafter, the impugned B.P.Ms.No.97 dated 04.10.1999 came to be issued, in which it was stated that, in the resolution No.5.6 dated 10.10.1999, the first respondent rejected the proposal of relaxation of holding of I.T.I. qualification for the post of Assistant Driller in respect of the existing Rig Helper. Consequent to the said B.P., other impugned proceedings dated 30.11.1999, 20.10.1999 and 25.10.1999 came to be issued, under which the respective respondents ordered for recovery of the excess payment made in the salary of the petitioners.

4. Assailing the impugned B.P.Ms.No.97 dated 04.10.1999 and the consequential proceedings, Mr.D.Hariparanthaman, learned counsel for the petitioners, contended that, when once the petitioners were granted exemption in their qualification and the said qualification was common even for the post of Assistant Driller, no further exemption was required, when the petitioners, along with other Rig Helpers, came to be redesignated under B.P.Ms.No.547 dated 04.12.1997. According to the learned counsel, in any event, when they were all redesignated under B.P.Ms.No.547 dated 04.12.1997, there was no justifiable ground for reverting the said position under the impugned

B.P.Ms.No.97 dated 0 4.10.1999.
5. The learned counsel also submitted that, since the petitioners were all governed by the provisions of the Industrial Disputes Act, 19 47, the sudden change in the service conditions brought about by the first respondent by the impugned B.P.Ms.No.97 dated 04.10.1999 and the consequential recoveries ordered by the other proceedings of the other respondents are in violation of Section 9-A of the Industrial Disputes Act and, thereby, such proceedings were rendered as null and void.
6. As against the above submissions, Mrs.Sudarshana Sundar, learned counsel for the respondents, contended that, the exemption, granted under B.P.Ms.No.113 dated 07.04.1987, was with particular reference to the post, namely, Helper alone and, therefore, the same cannot be applied for all times to come and also as the post of Assistant Driller being higher in rank, the possession of qualification was a must to hold that post.
7. Learned counsel also contended that, even in B.P.Ms.No.547 dated 04.12.1997, redesignation of the petitioners as Assistant Drillers was subject to the condition that the relaxation in their qualification is made and since the first respondent has decided not to grant the relaxation, its decision to revert the petitioners back to the post of Rig Helpers cannot be found fault with.
8. Reliance was placed upon by Mr.Hariparanthaman on the judgment reported in 1982 MLJ 294 (The Government of Tamil Nadu, represented by Secretary to Government, Commercial Taxes and Religious Endowment Department, Madras-9 and another v. M.N.Raghunathan) and an unreported judgment in W.A.No.327 of 1990 dated 25.04.1990, which was also confirmed by the Hon'ble Supreme Court in S.L.P.Civil No.9479 dated 21.09 .1990 and also the judgments reported in 1996 WRIT LAW REPORTER 513 (Velladurai and 9 Others v. Tamil Nadu Small Industries) and 1996 WRIT LAW REPORTER 519 (A.Gopalakrishnan and 13 Others v. Tamil Nadu Small Industries).
9. Mrs.Sudarshana Sundar, learned counsel for the respondents, would rely upon 1995 (I) LLJ 619 (A.Venkataramaiah v. M/s.Rashtriya Chemicals and Fertilizers Ltd. and Another), 1996 (2) LLJ 953 (U.P.State Cement Corporation Ltd. v. Industrial Tribunal U.P.Allahabad & Another) and 1997 (4) SCC 377 (Jaiprakash Sharma v. State of U.P. and Others), in support of her submissions.
10. Having heard the learned counsel for the parties, I am of the view that the contentions put forth on behalf of the petitioners are well founded.
11. In fact, the Division Bench judgment, relied upon by the learned counsel for the petitioners, fully supports the contentions of the petitioners. In the judgment reported in 1982 MLJ 294, the Division Bench has held that, when the exemption was granted for the lower posts from passing the required tests and when the very same tests were to be passed for the immediate higher post, the exemption granted for holding the lower post would enure to the benefit of the employee, even for considering his promotion to the higher post. The Division Bench has stated in para 7 to the following effect :
"…. This shows that the authorities thought it fit that the respondent even without passing Parts I and III of the Revenue Test is proficient in handling such subjects and that is why the exemption was granted while the respondent was appointed as Assistant. It is clear from the

Annexure IV that for the post of Assistant also a person must pass Parts I,II and III of the Revenue Tests. Once he acquires the knowledge in the said subject, and that has been recognised by the Government by granting the exemption, it is too much on the part of the Government to state that the respondent must again pass the said test to qualify himself to the post of Superintendent....."

12. Similar view was taken by another Division Bench, in its judgment dated 25.04.1990 in W.A.No.347 of 1990, wherein the judgment reported in 1982 MLJ 294 was also followed. In fact, in the judgment reported in 1979 (I) LLJ 356 (District Registrar, Palghat v. M.B. Koyyakutty), the Hon'ble Supreme Court dealt with a case, where the question posed for consideration was, "whether the exemption from qualification granted to a Government employee removing the bar from being appointed to the Ministerial service would enure for all purposes or whether it is confined only to the first entry into the service?". That was a case, where the first respondent therein was appointed as a Lower Division Clerk, after granting him exemption from possessing the minimum general educational qualification, namely, SSLC. When for the higher post of Upper Division Clerk seniority alone was the criterion and when the first respondent therein was not even considered for the higher post, the Writ Petition came to be moved before the Kerala High Court and, on its failure before a single Judge, an appeal was preferred before a Division Bench, which reversed the order of the learned single Judge and held that the first respondent therein was eligible for promotion as an Upper Division Clerk. When the matter was taken up by the State to the Hon'ble Supreme Court, the Supreme Court was also pleased to confirm the decision of the Division Bench of the Kerala High Court. Thus, the consistent view, on this aspect, is that where the qualification prescribed for the post at entry point as well as for the next higher post was one and the same and if exemption had been granted for the person at the entry level, such an exemption in respect of the very same qualification would hold good, even for the higher post as well. The contrary view expressed by a Division Bench of the Andhra Pradesh High Court reported in 1995 (I) LLJ 619, which is cited on behalf of the first respondent, cannot, therefore, be applied to the case on hand. If the abov e said legal position is clear and when once in B.P.No.113 dated 07.04.1987 the possession of qualification of I.T.I. for the post of Rig Helper in respect of the petitioners came to be relaxed in order to regularise them in their posts, it will have to be held that the said relaxation would enure to their benefit, when they were considered for the post of Assistant Driller, at the time when the post of Rig Helper came to be redesignated as Assistant Driller under B.P.Ms.No.547 dated 04.12.1997. The subsequent action of the second respondent in attempting to reverse the said position in the impugned B.P.No.97 dated 04.10.1999 cannot, therefore, be sustained. Further, in B.P.Ms.No.547 dated 04.12.1997, while redesignating the petitioners from the posts of Rig Helpers as Assistant Drillers, the first respondent Board, having taken a conscious decision to pass a further order of relaxation in their favour wherever they did not possess the I.T.I.qualification, it is too late in the day for the first respondent to suddenly turn around under the impugned B.P.Ms.No.97 dated 04.10.1999 without any reasoning or justification to withdraw from the said position and thereby attempt to revert the petitioners to the posts of Rig Helpers.

13. I am unable to accept the contention advanced on behalf of the respondents that redesignation of the petitioners as Assistant Drillers was subject to the condition of relaxation and that it was always open for the first respondent to deny such relaxation under the impugned B.P.No.97 dated 04.10.1999.

14. A reading of paragraph 3 of B.P.Ms.No.547 dated 04.12.1997 and the specific expressions used therein make it clear that the first respondent Board, after due deliberations i.e., after considering the report of its Financial Director dated 22.07.1997, was fully convinced that the petitioners, who did not possess I.T.I.qualification and in whose case the relaxation had already been ordered in B.P.Ms.No.113 dated 07.04.1987, were entitled for the said relaxation at the time of their redesignation as Assistant Drillers.

15. A reading of the said paragraph only shows that a formal order of relaxation in favour of the petitioners alone was to be issued and there was no scope for reversing the said position and say that no relaxation was possible. In such circumstances, the impugned B.P.Ms. No.97 dated 04.10.1999, being illegal in all respects, cannot be allowed to stand.

16. Further, as rightly contended by the learned counsel for the petitioners, when the petitioners were all workmen, governed by the provisions of the Industrial Disputes Act, 1947, and when once under B. P.Ms.No.547 dated 04.12.1997, the first respondent ordered for their redesignation as Assistant Drillers and such redesignation was also given effect to immediately thereafter and such condition of employment was continuing; by the impugned B.P.Ms.No.97 dated 04.10.1999, it was not open for the first respondent to reverse the said position unilaterally, without any opportunity to the petitioners. The ratio of the decisions reported in 1996 WLR 513 and 1996 WLR 519 consequently gets attracted and, applying the above said dictum to the case on hand, it will have to be held that B.P.Ms.No.97 dated 04.10.1999 was null and void and, therefore, on this ground as well, the same is liable to be set aside.

17. As far as the decision cited on behalf of the respondents reported in 1996 (2) LLJ 953 is concerned, that was a case where the Tribunal directed regularisation of the claimant concerned therein to a particular post, based on his experience and performance in that post, though he did not possess that qualification. When that award came to be challenged, the learned single Judge was pleased to hold that working or appreciation by itself cannot be taken to mean that a person had acquired the necessary expertise and thereby entitling him for being exempted from the holding of the qualification. As the facts are entirely different to the case on hand, the said judgment will have no application.

18. So far as the judgment reported in 1997 (4) SCC 377 is concerned, that was a case where the appellant therein approached the Court, seeking for a direction to invoke the exemption clause in order to prospect his higher promotion, where the Hon'ble Supreme Court took the view that no such right exists for anyone to seek for exemption by invoking the clause and that the same cannot be used as a matter of right. I, therefore, find the said case is inapplicable to the facts involved in this Writ Petition.

19. Having regard to my above said conclusions, the B.P.No.97 dated 04.10.1999 impugned in this Writ Petition is set aside and the

consequential orders of the second, third and fourth respondents dated 30 .11.1999, 20.10.1999 and 25.10.1999 are also hereby set aside. The respondents are directed to restore the position of the petitioners as Assistant Drillers, as was done pursuant to B.P.Ms.No.547 dated 04.1 2.1997, and extend all the consequential benefits applicable to the said position from that day.

20. Writ Petition stands allowed. No costs. Consequently, the connected W.M.P.is closed.

Index : Yes
Internet : Yes
dixit

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